

1 BRIAN M. DAUCHER, Cal. Bar No. 174212
ASHLEY E. MERLO, Cal. Bar No. 247997
2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
3 Including Professional Corporations
650 Town Center Drive, 4th Floor
4 Costa Mesa, California 92626-1993
Telephone: (714) 513-5100
5 Facsimile: (714) 513-5130
bdaucher@sheppardmullin.com
6 amerlo@sheppardmullin.com

7 ANDREW B. SERWIN, Cal. Bar No. 179493
AARON M. MURANAKA, Cal. Bar No. 253414
8 FOLEY & LARDNER LLP
402 W. Broadway, Suite 2100
9 San Diego, California 92101
Telephone: (619)
10 Facsimile: (619) 234-5130
aserwin@foley.com
11 amuranaka@foley.com

12 Attorneys for Defendants

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 TRAFFICSCHOOL.COM, INC., a
16 California corporation; DRIVERS ED
DIRECT, LLC., a California limited
17 liability company,

18 Plaintiffs,

19 v.

20 EDRIVER, INC., ONLINE GURU,
INC., FIND MY SPECIALIST, INC.,
21 and SERIOUSNET, INC., California
corporations; RAVI K. LAHOTI, an
22 individual; RAJ LAHOTI, an
individual; DOES 1 through 10,

23 Defendants.
24
25
26
27
28

Case No. CV 06-7561 PA (CWx)

**DEFENDANTS' EX PARTE
APPLICATION FOR ORDER
CONTINUING HEARING ON
MOTION FOR CONTEMPT**

[Filed with Daucher Declaration and
[Proposed] Order]

Complaint Filed: November 28, 2006
Jury Trial: October 30, 2007

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 Defendants hereby file this ex parte application requesting that this Court:
3 continue the hearing on the motion for contempt filed yesterday by plaintiffs in this matter
4 from January 26, 2009 to February 16, 2009, or such other date as the Court finds
5 reasonable.

6 This motion is brought for the following reasons. The motion for contempt,
7 was set for hearing on the shortest possible notice, leaving defendants only one week to
8 respond (current response date = January 12). Promptly on receipt of service, defendants
9 asked for and plaintiffs refused a request to continue the hearing for three weeks to
10 February 16, 2009 (plaintiffs offered no time at all). Good cause exists to continue the
11 motion to allow defendants reasonable time to respond in that:

- 12 • The motion is 23 pages long and is accompanied by six declarations running in
13 excess of 100 pages; the declarations include an 18 paragraph expert declaration.
14 Reasonable time is necessary to prepare responsive submissions.
- 15 • This Court cautions parties to provide more than minimum notice on similar
16 substantive MSJ motions (3/15/07 Scheduling Order, ¶¶ 3, 5(d) (expectation that
17 parties shall give "more than minimum notice" on MSJ); the logic of this
18 expectation applies with equal or greater force here where plaintiffs seek a contempt
19 finding based upon significant factual arguments.
- 20 • Plaintiffs, by contrast, have had three months or more to compile the motion (last
21 communication appears to be end of September 2008 (Hamilton Decl., Ex H, p. 25).
22 Giving defendants one month to respond would be reasonable.
- 23 • Finally, a quick glance at the merits of the motion show that the issues raised are
24 not serious. Upon entry of the injunction, defendants not only promptly came into
25 substantial compliance, but also, since that time, have voluntarily maintained
26 identical and additional disclaimers and safeguards on the site itself (not required by
27 the injunction). As demonstrated by the timing of the filing of the motion (some
28

1 four months after splash page went live), there is no exigent need or justification to
2 have the motion heard on the shortest possible notice.

3 Pursuant to Local Rule 7-19.1, defendants first conferred with plaintiffs in an
4 effort to reach a stipulated continuance; and, upon their refusal, defendants then advised
5 them of this ex parte; plaintiffs intend to oppose. (Daucher Decl., ¶ 2, Ex. A.) Pursuant to
6 Local Rule 7-19, Defendants hereby identify contact information for counsel for Plaintiffs'
7 counsel as follows:

8 Mina Hamilton

9 Lewis Brisbois Bisgaard & Smith LLP

10 221 North Figueroa Street, Suite 1200, Los Angeles, California 90012

11 Phone: (213) 250-1800; hamilton@lbbslaw.com

12 Based upon the foregoing, defendants request that this Court promptly
13 continue the hearing of plaintiffs' motion from January 26, 2009 to February 16, 2009 or
14 such other date as the Court deems reasonable (note: defendants counsel is not available to
15 attend a hearing on February 9, 2009; Daucher Decl., ¶ 3).

16 Dated: January 6, 2009

17 Respectfully submitted,

18 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

19
20
21 By


BRIAN M. DAUCHER

22 Attorneys for Defendants
23 EDRIVER, INC., ONLINE GURU, INC.,
24 FIND MY SPECIALIST, INC.,
25 SERIOUSNET, INC., RAVI K. LAHOTI and
26 RAJ LAHOTI
27
28